

§ 11.37

the valuation methodologies authorized by §11.83(c) to calculate compensable value. When using valuation methodologies, the authorized official must comply with §11.84.

[61 FR 20610, May 7, 1996]

§ 11.37 Must the authorized official confirm exposure before implementing the Assessment Plan?

(a) Before including any type B methodologies in the Assessment Plan, the authorized official must confirm that at least one of the natural resources identified as potentially injured in the preassessment screen has in fact been exposed to the released substance.

(b) *Procedures.* (1) Whenever possible, exposure shall be confirmed by using existing data, such as those collected for response actions by the OSC, or other available studies or surveys of the assessment area.

(2) Where sampling has been done before the completion of the preassessment screen, chemical analyses of such samples may be performed to confirm that exposure has occurred. Such analyses shall be limited to the number and type required for confirmation of exposure.

(3) Where existing data are unavailable or insufficient to confirm exposure, one or more of the analytical methodologies provided in the Injury Determination phase may be used. The collection and analysis of new data shall be limited to that necessary to confirm exposure and shall not include testing for baseline levels or for injury, as those phrases are used in this part.

[51 FR 27725, Aug. 1, 1986. Redesignated and amended at 61 FR 20610, 20611, May 7, 1996]

§ 11.38 Assessment Plan—preliminary estimate of damages.

(a) *Requirement.* When performing a type B assessment pursuant to the requirements of subpart E of this part, the authorized official shall develop a preliminary estimate of: the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources; and the compensable value, as defined in §11.83(c) of this part, of the injured natural resources, if the authorized official intends to include compensable value in the damage

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claim. This preliminary estimate is referred to as the preliminary estimate of damages. The authorized official shall use the guidance provided in this section, to the extent possible, to develop the preliminary estimate of damages.

(b) *Purpose.* The purpose of the preliminary estimate of damages is for reference in the scoping of the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the damage assessment fulfills the requirements of reasonable cost, as that term is used in this part. The authorized official will also use the preliminary estimate of damages in the review of the Assessment Plan, as required in §11.32(f) of this part, to ensure the requirements of reasonable cost are still met.

(c) *Steps.* The preliminary estimate of damages should include consideration of the ability of the resources to recover naturally and, if relevant, the compensable value through the recovery period with and without possible alternative actions. The authorized official shall consider the following factors, to the extent possible, in making the preliminary estimate of damages:

(1) The preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should include consideration of a range of possible alternative actions that would accomplish the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources.

(i) The preliminary estimate of costs should take into account the effects, or anticipated effects, of any response actions.

(ii) The preliminary estimate of costs should represent the expected present value of anticipated costs, expressed in constant dollars, and should include direct and indirect costs, and include the timing of those costs. The provisions detailed in §§11.80–11.84 of this part are the basis for the development of the estimate.

(iii) The discount rate to be used in developing the preliminary estimate of costs shall be that determined in accordance with the guidance in §11.84(e) of this part.

(2) The preliminary estimate of compensable value should be consistent with the range of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources being considered.

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, *i.e.*, between the occurrence of the discharge or release and the completion of (A) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (B) the replacement and/or acquisition of equivalent natural resources capable of providing such services. The estimate should use the same base year as the preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§11.80–11.84 of this part are the basis for the development of this estimate.

(ii) The preliminary estimate of compensable value should take into account the effects, or anticipated effects, of any response actions.

(iii) The discount rate to be used in developing the preliminary estimate of compensable value shall be that determined in accordance with the guidance in §11.84(e) of this part.

(d) *Content and timing.* (1) In making the preliminary estimate of damages, the authorized official should rely upon existing data and studies. The authorized official should not undertake significant new data collection or perform significant modeling efforts at this stage of the assessment planning phase.

(2) Where possible, the authorized official should make the preliminary estimate of damages before the completion of the Assessment Plan as provided for in §11.31 of this part. If there is not sufficient existing data to make the preliminary estimate of damages at the same time as the assessment planning phase, this analysis may be completed later, at the end of the In-

jury Determination phase of the assessment, at the time of the Assessment Plan review.

(3) The authorized official is not required to disclose the preliminary estimate before the conclusion of the assessment. At the conclusion of the assessment, the preliminary estimate of damages, along with its assumptions and methodology, shall be included in the Report of the Assessment as provided for in §11.91 of this part.

(e) *Review.* The authorized official shall review, and revise as appropriate, the preliminary estimate of damages at the end of the Injury Determination and Quantification phases. If there is any significant modification of the preliminary estimate of damages, the authorized official shall document it in the Report of the Assessment.

[59 FR 14282, Mar. 25, 1994. Redesignated at 61 FR 20610, May 7, 1996, as amended at 73 FR 57266, Oct. 2, 2008]

Subpart D—Type A Procedures

§ 11.40 What are type A procedures?

(a) A type A procedure is a standardized methodology for performing Injury Determination, Quantification, and Damage Determination that requires minimal field observation. There are two type A procedures: the type A procedure for coastal and marine environments; and the type A procedure for Great Lakes environments. The type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.51 (NRDAM/CME). The NRDAM/CME technical document (incorporated by reference, see §11.18) includes and explains the NRDAM/CME. The type A procedure for Great Lakes environments incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.51 (NRDAM/GLE). The NRDAM/GLE technical document (incorporated by reference, see §11.18) includes and explains the NRDAM/GLE. The authorized official must follow §§11.41 through 11.44 when using the type A procedures.